HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE S. ANANDA REDDY

WRIT PETITION Nos.22245 of 2002 & 818 of 2005

Date: 25-06-2007.

Between :

M/s.Sri Sai Teja Enterprises, Vijayawada,
rep. by its Partner.

.....Petitioner

And

The Commercial Tax Officer, Governorpet, Vijayawada & another.

.....Respondents.

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AND
HON'BLE SRI JUSTICE S. ANANDA REDDY

WRIT PETITION Nos.22245 of 2002 & 818 of 2005

COMMON ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

Heard learned counsel for the parties.

Section 5-C as incorporated by an amendment to the Andhra Pradesh General Sales Tax Act, 1957 with effect from 01.01.2000 has been challenged in these writ petitions as arbitrary and violative of Article 14 of the Constitution. This Section reads as under—

> "**5-C Tax in respect of supply of articles of food or drinks in restaurants or catering houses or hotels :**
>
> Notwithstanding anything contained in section 5 or section 6, every dealer running any restaurant or eating house, or hotel, (by whatever name called), who supplies, by way of or as part of any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) and whether or not such goods have suffered tax under this Act, where such supply or service is for cash, deferred payment or other valuable consideration shall on the total

> amount charged by the said dealer for such supply, pay a tax at the rate of eight paise on every rupee on the aggregate of such amount realized or realizable by him during the year:
>
> Provided that no such tax shall be levied if the total turnover of the dealer including such aggregate during the year is less than Rs.2,00,000/-"

During the hearing, the learned counsel for petitioner only stated that the intention of the Government has always been that the commodities which were supplied in the hotels should not be taxed twice and for this purpose, certain G.Os. were issued prior to the amendment and also after the amendment. Even prior to this amendment, no tax was levied on eatables supplied in a hotel/restaurant or a bar. But the learned counsel for petitioner has not at all explained as to how the provision is violative of Article 14 of the Constitution of India. There are well-known tests by which the Constitutional validity of a Statute can be tested. We have not been shown any ground on the basis of which such a provision can be declared to be un-Constitutional. However, the learned counsel for petitioner has drawn our attention to a judgment reported in **State of Andhra Pradesh v. Bhagya Lakshmi Hatcheries Pvt.Ltd.**[1] This judgment, in our view, is not relevant for the purpose of the present controversy.

Therefore, we do not find merit in these writ petitions, which are accordingly dismissed.

BILAL NAZKI, J

25th June 2007

S. ANANDA REDDY, J

ajr

[1] 121 STC 218